

Exhibit “A”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

KELLY LYLES,

Plaintiff,

Case No: 1:22-cv-23184-WPD

v.

AMERICAN ZURICH INSURANCE
COMPANY,

Defendant.

AFFIDAVIT OF RACHELE HOLDEN

STATE OF TEXAS)

) ss.:

COUNTY OF BEXAR)

RACHELE HOLDEN, being duly sworn, deposes and says:

1. My name is Rachele Holden.

2. I am employed by US Assure Insurance Services of Florida, Inc. ("US Assure") as the Senior Vice President, Head of Product Underwriting. Our office is located at 8230 Nations Way, Jacksonville, Florida 32256.

3. US Assure distributes, underwrites and services construction and property insurance products across the United States for "A" rated carriers, including American Zurich Insurance Company ("American Zurich").

4. I have been directly involved with the underwriting of insurance policies for American Zurich and its subsidiaries, including Builders Risk insurance policies, for over twenty-five years and I have forty-five years of total experience in the insurance industry.

5. I am submitting this affidavit in support of the Motion to Dismiss and Incorporated Memorandum of Law in Support Thereof by American Zurich in this action.

6. The facts discussed in this affidavit are based upon my own personal knowledge, my review of the underwriting file in connection with this matter, and my discussions with American Zurich concerning the insurance claim at issue in this action.

7. On August 28, 2020, Kelly Lyles ("Lyles") executed a Builders Risk New Business Application for builders risk insurance coverage for the residential property located at 10395 NE 12th Avenue, Miami Shores, FL 33138 (the "Insured Premises"). A true and correct copy of the application is attached hereto as Exhibit "A."

8. According to Lyles' response to the first-question in the application, the Insured Premises is identified as "new construction of a single family dwelling with a total completed value of \$500,000 or less." Lyles' response to the third question of the application further states that the Insured Premises is not "more than 30% complete."

9. The application was co-signed by Lyles' insurance broker, Alexander Cull, of Brightway Insurance, Inc. on August 28, 2020 and submitted to US Assure on behalf of American Zurich.

10. Based upon the information contained within the application, American Zurich issued a Builders Risk insurance policy bearing Policy Number BR15216973 to Lyles for the Insured Premises, with effective dates of September 10, 2020 to September 10, 2021 (the "Policy").

11. American Zurich has informed me that on or about December 10, 2021, Lyles submitted a claim for alleged loss and/or damage to the Insured Premises. American Zurich further informed me that based upon American Zurich's investigation, it was immediately obvious that the Insured Premises is not a new construction property. American Zurich further informed me that Lyles submitted to a recorded interview and further confirmed that the Insured Premises is not a new construction property.

12. As evidenced by American Zurich's observations from its claim investigation and the statements made by Lyles, it is clear that the application for the Policy contains at least two misrepresentations.

13. Based on my underwriting experience, including my work with American Zurich, the

misstatements in the Policy application are material. Specifically, if Lyles disclosed the fact that the Insured Premises was not a new construction property, then (1) she would have been required to provide several more pages of information in connection with the application for the Policy; (2) depending on the answers to those additional questions, American Zurich may not have issued the Policy at all; and (3) at minimum, if the Policy was still issued, the premium charged for it would have been between three to five times *higher* than what was charged when the Policy was issued.

FURTHER AFFIANT SAYETH NOT.

Under penalties of perjury, I declare that I have read the foregoing affirmations and that the facts stated in it are true and correct to the best of my knowledge and belief.

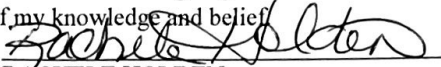

RACHELE HOLDEN
Dated: October 26, 2022

Exhibit “A” to Holden Affidavit

BUILDERS RISK NEW BUSINESS ~~X~~PressBIND

Insured: Kelly Lyles
 Effective date: 09/01/2020 - 09/01/2021
 Status: Work in progress
 Policy description: One-shot residential new construction
 Login name: northside08
 Agency: BRIGHTWAY INSURANCE INC
 Producer code: 12353348
 Iteration: 1

XpressBIND Eligibility

Is this new construction of a single family dwelling with a total completed value of \$500,000 or less? *

Yes

Does builder/remodeler/owner/GC have at least 2 years experience? *

Yes

Is the home more than 30% complete? *

No

Is the structure modular? *

No

Is the protection class 9, 10 or ending in X? *

No

Policy effective date *

09/01/2020

Property Information

Property address *

10395 NE 12th Avenue

Property city *

Miami Shores

Property zip *

33138

Property state *

FL

Property county *

DADE

Is this structure/project located within 1,000 feet of tidal water or located on a barrier island? *

No

Insured Information

Insured name *

Kelly Lyles

Insured mailing address line 1 *

10395 NE 12th Avenue

Insured city *

Miami Shores

Insured zip *

33138

Insured state *

FL

Insured's form of business *

Individual

Description of named insured *

Owner

Add additional interests *

No

Producer Information

Producer code *

12353348

Producing agent legal name (Property state) *

ALEXANDER CULL

E-mail address *

alexander.cull@brightway.com

Producing agent license number (Property state) *

W194042

Please Note: This quote if issued will be invoiced on a direct bill basis. Upon issuance, US Assure will process a premium invoice for this policy within 24-48 hours and mail it to the address listed on the policy. Should you have questions about our billing process, contact us at (800) 800 – 3907, option 2.

| Base coverages | Limit | Rate | Premium |
|--|-----------|---------|------------|
| Total completed value of any one structure | \$350,000 | | |
| Total completed value of all covered property \$5,000 deductible applicable to losses to covered property | \$350,000 | \$0.567 | \$1,985.00 |
| Additional coverages | Limit | Rate | Premium |
| Contract Penalties | \$25,000 | \$0.00 | \$0.00 |
| Claim Preparation Expense | \$10,000 | \$0.00 | \$0.00 |
| Back-up or overflow of sewer, drains or sumps | \$25,000 | \$0.00 | \$0.00 |

| Base coverages | Limit | Rate | Premium |
|---|----------------|----------|-------------------|
| Debris removal | \$50,000 | \$0.00 | \$0.00 |
| Property at a temporary storage location | \$25,000 | \$0.00 | \$0.00 |
| Pollution clean up and removal | \$25,000 | \$0.00 | \$0.00 |
| Scaffolding re-erection | \$25,000 | \$0.00 | \$0.00 |
| Scaffolding, construction forms and temporary structures | \$50,000 | \$0.00 | \$0.00 |
| Valuable papers and records | \$50,000 | \$0.00 | \$0.00 |
| Reward | \$25,000 | \$0.00 | \$0.00 |
| Fire department service charge | \$25,000 | \$0.00 | \$0.00 |
| Property in transit | \$25,000 | \$0.00 | \$0.00 |
| Ordinance or Law | | | |
| Loss to the undamaged portion of the building | Included | | |
| Demolition cost | \$350,000 | | |
| Increased cost of construction | \$350,000 | | |
| Combined Aggregate for Demolition Cost and Increased Cost of Construction | \$350,000 | \$0.00 | \$0.00 |
| Optional coverages | Limit | Rate | Premium |
| Change order endorsement | \$35,000 | \$0.567 | \$198.00 |
| Wind deductible 3% | Per Occurrence | Included | \$0 |
| Totals and surcharges | | | Premium |
| Premium all coverages | | | \$2,183.00 |
| TOTAL FULLY EARNED POLICY PREMIUM | | | \$2,183.00 |

Direct Bill Payment Plan (\$2,183.00) *

Prior to binding coverage with Zurich, you (the agent) will need to provide the customer with a printed copy of the [attached disclosure notice](#) terms required by the Terrorism Risk Insurance Act of 2002 or verbally advise the customer of the [attached disclosure notice](#) terms.

Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree.

The undersigned is an authorized representative of the applicant and certifies that reasonable enquiry has been made to obtain the answers to questions on this application. He/She certifies that the answers are true, correct and complete to the best of his/her knowledge.

DocuSigned by:
 Insured's Signature: *Kelly Lyles*
 8/28/2020 7:19:07 PM PDT
 Date: _____

DocuSigned by:
 Agent's Signature: *Alexander Cull*
 8/28/2020 1:06:50 PM PDT
 Date: _____